

Part 2

Certificate of Authority and Operations

31A-37a-201 Certificate of authority requirements.

- (1) A person may not reinsure the risks of a ceding insurer unless the person has a certificate of authority under this chapter as a special purpose financial captive insurance company.
- (2) To apply for a certificate of authority under this chapter as a special purpose financial captive insurance company, a special purpose financial captive insurance company shall submit an application for the certificate of authority that, in addition to complying with Chapter 37, Captive Insurance Companies Act, complies with the following:
 - (a) A special purpose financial captive insurance company shall submit to the commissioner a plan of operation that includes:
 - (i) a complete description of:
 - (A) a significant transaction including:
 - (I) reinsurance;
 - (II) a reinsurance security arrangement;
 - (III) an insurance securitization; or
 - (IV) a transaction or arrangement related to a transaction described in Subsections (2)(a)(i)(A)(I) through (III);
 - (B) to the extent not included in Subsection (2)(a)(i)(A), a party other than the special purpose financial captive insurance company and the ceding insurer that is involved in the issuance of a special purpose financial captive insurance company security; and
 - (C) a pledge, hypothecation, or grant of a security interest in:
 - (I) an asset of the special purpose financial captive insurance company; or
 - (II) stock or a limited liability company interest in the special purpose financial captive insurance company;
 - (ii) the source and form of the special purpose financial captive insurance company's capital and surplus;
 - (iii) the proposed investment policy of the special purpose financial captive insurance company;
 - (iv) a description of an underwriting, reporting, and claims payment method by which losses covered by a reinsurance contract are reported, accounted for, and settled;
 - (v) pro forma balance sheets and income statements illustrating one or more adverse case scenarios, as determined under criteria required by the commissioner, for the performance of the special purpose financial captive insurance company under a reinsurance contract; and
 - (vi) the proposed rate and method for discounting reserves, if the special purpose financial captive insurance company is requesting authority to discount its reserves.
 - (b) The special purpose financial captive insurance company shall submit an affidavit:
 - (i) of the following of the special purpose financial captive insurance company:
 - (A) president;
 - (B) vice president;
 - (C) treasurer; or
 - (D) chief financial officer; and
 - (ii) that includes the following statements, to the best of knowledge and belief of the person submitting the affidavit after reasonable inquiry:

- (A) the proposed organization and operation of the special purpose financial captive insurance company complies with this chapter and the applicable provisions of Chapter 37, Captive Insurance Companies Act;
- (B) the special purpose financial captive insurance company's investment policy reflects and takes into account:
 - (I) the liquidity of assets; and
 - (II) the reasonable preservation, administration, and management of those assets with respect to the risks associated with:
 - (Aa) a reinsurance contract; and
 - (Bb) an insurance securitization transaction; and
- (C) the following comply with this chapter:
 - (I) a reinsurance contract; and
 - (II) an arrangement for securing an obligation of the special purpose financial captive insurance company under the reinsurance contract, including an agreement or other documentation to implement the arrangement.
- (c) A special purpose financial captive insurance company shall submit to the commissioner:
 - (i) a copy of an agreement or documentation described in Subsection (2)(b), unless otherwise approved by the commissioner; and
 - (ii) a statement or document required by the commissioner to evaluate the special purpose financial captive insurance company's application for a certificate of authority.
- (d)
 - (i) Subject to Subsection (2)(d)(ii), a special purpose financial captive insurance company shall submit with the application an opinion of a licensed attorney, in a form acceptable to the commissioner, that:
 - (A) the offer and sale of a special purpose financial captive insurance company security complies with:
 - (I) the registration requirements of federal securities laws; or
 - (II) the exemptions from or exceptions to a requirement of the federal securities laws; and
 - (B) the offer and sale of a security by the special purpose financial captive insurance company complies with:
 - (I) the registration requirements of this state's securities laws; or
 - (II) the exemptions from or exceptions to a requirement of this state's securities laws.
 - (ii) A special purpose financial captive insurance company is not required to submit an opinion described in Subsection (2)(d)(i) with an application if the special purpose financial captive insurance company includes a specific statement in its plan of operation that the opinion described in Subsection (2)(d)(i) will be provided to the commissioner before the offer or sale of a special purpose financial captive insurance company security.
- (3)
 - (a) The commissioner may issue a certificate of authority to a special purpose financial captive insurance company that complies with Subsection (2) authorizing the special purpose financial captive insurance company to transact reinsurance business as a special purpose financial captive insurance company in this state if the commissioner finds that:
 - (i) the proposed plan of operation provides for a reasonable and expected successful operation;
 - (ii) the terms of the reinsurance contract or related transaction comply with this chapter;
 - (iii) the proposed plan of operation is not hazardous to a ceding insurer; and
 - (iv) subject to Subsection (3)(b), the insurance regulator of the state of domicile of a ceding insurer has notified the commissioner in writing or otherwise provided assurance

satisfactory to the commissioner that the regulator of the state has approved or has not disapproved the transaction.

- (b) Notwithstanding Subsection (3)(a)(iv), the commissioner may issue a certificate of authority to a special purpose financial captive insurance company if the insurance regulator of the state of domicile of a ceding insurer does not respond with respect to all or a part of the transaction.
- (c)
 - (i) A certificate of authority issued under this section is valid through the June 30 after the day on which the certificate of authority is issued.
 - (ii) A special purpose financial captive insurance company may renew its certificate of authority annually by, before the certificate of authority expires:
 - (A) submitting the affidavit required by Subsection (2); and
 - (B) paying a renewal fee.
- (4) In conjunction with issuing a certificate of authority to a special purpose financial captive insurance company, the commissioner may issue an order that includes a provision, term, or condition regarding the organization, issuance of a certificate of authority, and operation of the special purpose financial captive insurance company that:
 - (a) the commissioner considers appropriate; and
 - (b) is not inconsistent with this chapter and Chapter 37, Captive Insurance Companies Act.

Enacted by Chapter 302, 2008 General Session

31A-37a-202 Revocation, suspension, amendment, or modification of a certificate of authority.

Except as provided in Sections 31A-37a-501 and 31A-37a-502, the commissioner may not revoke, suspend, amend, or modify a certificate of authority issued to a special purpose financial captive insurance company under this chapter or an order issued under Subsection 31A-37a-201(4) unless:

- (1) the special purpose financial captive insurance company consents to the revocation, suspension, amendment, or modification; or
- (2) the commissioner shows by clear and convincing evidence that the revocation, suspension, amendment, or modification is necessary to avoid irreparable harm to:
 - (a) a special purpose financial captive insurance company; or
 - (b) a ceding insurer.

Enacted by Chapter 302, 2008 General Session

31A-37a-203 Reporting related to transactions.

- (1) A special purpose financial captive insurance company shall provide the commissioner with a copy of a complete set of executed documentation of an insurance securitization no later than 30 days after the day on which the insurance securitization transaction closes.
- (2) Section 31A-37-503 applies to:
 - (a) information submitted pursuant to Subsection (1);
 - (b) information submitted pursuant to Subsection 31A-37a-201(2); or
 - (c) an order issued to a special purpose financial captive insurance company pursuant to Subsection 31A-37a-201(4).

Enacted by Chapter 302, 2008 General Session

31A-37a-204 Prior approval of a change in plan of operation and other transactions.

- (1) A special purpose financial captive insurance company may not change its plan of operation without the prior approval of the commissioner.
- (2)
 - (a) Subject to Subsection (2)(b), a special purpose financial captive insurance company may not engage in a transaction or series of transactions without the prior approval of the commissioner if the transaction or series of transactions:
 - (i) is undertaken to dissolve the special purpose financial captive insurance company; or
 - (ii) results in the termination of all or a part of a special purpose financial captive insurance company's business.
 - (b) A special purpose financial captive insurance company is not required to obtain the prior approval of the commissioner for a transaction or series of transactions described in Subsection (2)(a)(ii) if:
 - (i) the transaction or series of transactions is done in accordance with a document or agreement described in the special purpose financial captive insurance company's plan of operation; and
 - (ii) the special purpose financial captive insurance company notifies the commissioner prior to the transaction or series of transactions.
- (3) A special purpose financial captive insurance company shall notify the commissioner before a change in the legal ownership of a security issued by the special purpose financial captive insurance company.

Enacted by Chapter 302, 2008 General Session

31A-37a-205 Sponsored captives.

In addition to the other provisions of this chapter, this section applies to a sponsored captive insurance company under Chapter 37, Captive Insurance Companies Act, that has a certificate of authority as a special purpose financial captive insurance company pursuant to this chapter.

- (1) A sponsored captive insurance company may have a certificate of authority as a special purpose financial captive insurance company under this chapter.
- (2)
 - (a) For purposes of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, "general account" means the assets and liabilities of the sponsored captive insurance company not attributable to a protected cell.
 - (b) For purposes of applying Chapter 27a, Insurer Receivership Act, to a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, the definition of "insolvency" and "insolvent" in Section 31A-37a-102 shall be applied separately to:
 - (i) each protected cell; and
 - (ii) the special purpose financial captive insurance company's general account.
- (3)
 - (a) A participant in a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall be a ceding insurer, unless approved by the commissioner before a person becomes a participant.
 - (b) A change in a participant in a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company is subject to prior approval by the commissioner.

- (4) Notwithstanding Section 31A-37-401, a special purpose financial captive insurance company that is a sponsored captive insurance company may issue a security to a person not described in Section 31A-37-401 if the issuance to that person is approved by the commissioner before the issuance of the security.
- (5) Notwithstanding Section 31A-37a-302, a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall:
 - (a) at the time of initial application for a certificate of authority as a special purpose financial captive insurance company, possess unimpaired paid-in capital and surplus of not less than \$500,000; and
 - (b) maintain at least \$500,000 of unimpaired paid-in capital and surplus of not less than \$500,000 during the time that it holds a certificate of authority under this chapter.
- (6)
 - (a) For purposes of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company, this Subsection (6) applies to:
 - (i) a security issued by the special purpose financial captive insurance company with respect to a protected cell; or
 - (ii) a contract or obligation of the special purpose financial captive insurance company with respect to a protected cell.
 - (b) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall include with a security, contract, or obligation described in Subsection (6)(a):
 - (i) the designation of the protected cell; and
 - (ii) a disclosure in a form and content satisfactory to the commissioner to the effect that the holder of the security or a counterparty to the contract or obligation has no right or recourse against the special purpose financial captive insurance company and its assets other than against an asset properly attributable to the protected cell.
 - (c) Notwithstanding the requirements of this Subsection (6) and subject to other statutes or rules including this chapter and Chapter 37, Captive Insurance Companies Act, a creditor, ceding insurer, or another person may not use a failure to include a disclosure described in Subsection (6)(b), in whole or part, as the sole basis to have recourse against:
 - (i) the general account of the special purpose financial captive insurance company; or
 - (ii) the assets of another protected cell of the special financial captive insurance company.
- (7) In addition to Section 31A-37-401, a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company is subject to the following with respect to a protected cell:
 - (a)
 - (i) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a protected cell only for the purpose of insuring or reinsuring risks of one or more reinsurance contracts with a ceding insurer with the intent of facilitating an insurance securitization.
 - (ii) Subject to Subsection (7)(a)(iii), a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a separate protected cell with respect to a ceding insurer described in Subsection (7)(a)(i).
 - (iii) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall establish a separate protected cell with respect to each reinsurance contract that is funded in whole or in part by a separate insurance securitization transaction.

- (b) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not sale, exchange, or transfer an asset by, between, or among any of its protected cells without the prior approval of the commissioner.
- (8)
- (a) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall attribute an asset or liability to a protected cell and to the general account in accordance with the plan of operation approved by the commissioner.
 - (b) Except as provided by Subsection (8)(a), a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not attribute an asset or liability between:
 - (i) its general account and a protected cell; or
 - (ii) its protected cells.
 - (c) A sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company shall attribute:
 - (i) an insurance obligation, asset, or liability relating to a reinsurance contract entered into with respect to a protected cell; and
 - (ii) an insurance securitization transaction related to the obligation, asset, or liability described in Subsection (8)(c)(i), including a security issued by the special purpose financial captive insurance company as part of the insurance securitization, to the protected cell.
 - (d) The following shall reflect an insurance obligation, asset, or liability relating to a reinsurance contract and the insurance securitization transaction that are attributed to a protected cell:
 - (i) a right, benefit, obligation, or a liability of a security attributable to a protected cell described in Subsection (8)(c);
 - (ii) the performance under a reinsurance contract and the related insurance securitization transaction; and
 - (iii) a tax benefit, loss, refund, or credit allocated pursuant to a tax allocation agreement to which the special purpose financial captive insurance company is a party, including a payment made by or due to be made to the special purpose financial captive insurance company pursuant to the terms of the tax allocation agreement.
- (9) In addition to Section 31A-37a-502:
- (a) Chapter 27a, Insurer Receivership Act, applies to each protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company.
 - (b) A proceeding or action taken by the commissioner pursuant to Chapter 27a, Insurer Receivership Act, with respect to a protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not be the sole basis for a proceeding pursuant to Chapter 27a, Insurer Receivership Act, with respect to:
 - (i) another protected cell of the special purpose financial captive insurance company; or
 - (ii) the special purpose financial captive insurance company's general account.
- (c)
- (i) Except as provided in Subsection (9)(c)(ii), the receiver of a special purpose financial captive insurance company shall ensure that the assets attributable to one protected cell are not applied to the liabilities attributable to:
 - (A) another protected cell; or
 - (B) the special purpose financial captive insurance company's general account.

- (ii) Notwithstanding Subsection (9)(c)(i), if an asset or liability is attributable to more than one protected cell, the receiver shall deal with the asset or liability in accordance with the terms of a relevant governing instrument or contract.
- (d) The insolvency of a protected cell of a sponsored captive insurance company having a certificate of authority as a special purpose financial captive insurance company may not be the sole basis for the commissioner to prohibit:
 - (i) a payment by the special purpose financial captive insurance company made pursuant to a special purpose financial captive insurance company security or reinsurance contract with respect to another protected cell; or
 - (ii) an action required to make a payment described in Subsection (9)(d)(i).

Amended by Chapter 297, 2011 General Session